

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.1397 OF 1987.

Date of Decision:-8-1-1996.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. R.M. Vin, Adovoate, for the petitioner.
Mr. B. P. Tanna, Advocate, for the respondent.

Coram:-N.N Mathur, J.

Date:--8-1-1996.

Oral Judgemnt:-

By way of this Special Civil Application the petitioner seeks a direction against the Ahmedabad Municipal Corporation to refund Rs.10920/- with interest thereon.

2. The say of the petitioner is that he carries on business as a Carting Agent, arranging to carry goods of his customers. In February, 1985 certain parties engaged his services to carry their consignments from Narol to Bombay. There were in all three consignments totalling 38 items and they all were loaded in truck bearing

Registration No.GRX 3217. It was a hired truck and was meant to carry the entire bulk of goods from Narol to Bombay on or about 24-2-1985 without entering into municipal limits of the respondent Corporation. The driver of the truck before leaving for Bombay drove the truck to his house in Maninagar, within the limits of the respondent Corporation. While the truck was parked outside the house of the driver the staff of the Octroi Department of the respondent Corporation arrived there and demanded octroi duty. It was disclosed that the consignments were loaded on the truck only with a view to take the goods to Bombay. The officers were not satisfied with the explanation of the driver and then they directed him to take the truck to the office premises of the Corporation. The goods were unloaded and the officers of the respondent Corporation refused to release the goods unless the amount of octroi duty was paid. The petitioner having come to know about the fact went to the office of the respondent Corporation and deposited the octroi duty in the sum of Rs.10920/- under protest on 25-2-1985. On production of the receipt the truck and goods were released. It is the further say of the petitioner that truck with consignee's name as "self" carried the goods out of the Corporation limits through Maninagar Crossing Octroi Naka. The goods were examined by the Octroi staff, they found the same goods as imported and on such satisfaction, the Octroi staff issued an Export Certificate. The petitioner has placed on record the zerox copy of the Import Bill dated 25-2-1985 at annexure 'A' and the export certificate dated 25-2-1985 is at annexure 'B' respectively. The petitioner immediately thereafter filed an application for refund. The petitioner has placed on record the acknowledgment receipt of the Refund Application dated 28-2-1985 at annexure 'C'. The petitioner complains that inspite of the fact that he had made inquiries several time he has not been told about the decision on refund application.

3. Shri Pravin Naik, Octroi Superintendent has filed the affidavit on behalf of the Ahmedabad Municipal Corporation. It is stated that the petitioner is a guilty of concealing the material fact that on the same subject matter Special Civil Application was filed before this Court which was registered as Special Civil Application No.828 of 1985 and the same has been disposed of by the order dated 21-2-1985. It is also stated that the petitioner gave the undertaking before the Court that he will give address or addresses and telephone number if any of the parties to whom the goods are to be delivered and that further delivery of the goods will not be made without giving prior intimation thereof to the Assistant

Municipal Commissioner. This undertaking is observed in breach. It is further pointed out that the petitioner addressed himself as "consignee" and "consignor" . No details about the name, address and telephone number etc. of the consignee was given. It is also nowhere stated that the goods were sent to his own address at particular place in Bombay. The respondent has also challenged genuineness of so called Export Certificate. According to the respondent the Export Certificate is fictitious. It is further stated that at the time of import no document was produced by the petitioner stating that the goods were not taken within the municipal limits for the purpose of use, sale or consumption. According to the respondent, the petitioner has deliberately not disclosed the name of the consignee with a view to evade payment of octroi duty.

4. It appears from the endorsement on the affidavit-in-reply that the copy of the said reply was received by the learned Advocate for the petitioner on 11-8-1988. No rejoinder has been filed refuting the allegations. Thus, the allegations made in the counter affidavit stands un rebutted. I have perused the original file of Special Civil Application No.828 of 1985. It appears from the memo of the petition that the Special Civil Application was filed with respect to the goods brought within the limits of the respondent Corporation in the vehicles bearing No.GRX 3217 and GRT 4574. In para 3 of the petition it is stated that vehicle No.GRX 3217 contained the goods which were not meant for sale, use or consumption within the Ahmedabad Municipal limits, but were to be transported out of Ahmedabad through Railway. The goods in said vehicle were in transit and therefore the petitioner was entitled to the Transit Pass but the same was not issued on the ground that the goods in question were to be booked through the Railway for Bombay and there were instructions from the higher authorities not to issue Transit Pass in such matters. In para 6 of the petition it is contended that the goods in transit contained in truck No.GRX 3217 could not be subjected to levy and collection of octroi because they were not meant for use, sale or consumption within the municipal limits. So far as another vehicle bearing GRT 4574 is concerned, in para 4 of the petition it is stated that the said vehicle contained the goods namely 18 cartoons of Bournavita, 7 cartoons of Law-books, 1 bag of pistachia and 16 bags of yarn. The said goods were meant for Ahmedabad city. On law books no octroi was payable as they being exempted item and on the rest the petitioner was ready to pay octroi duty. The driver of the truck was prepared to pay octroi duty but as the truck was stopped at the

'naka' he did not pay the same. However, when he was called he immediately offered to pay octroi charges.

5. It was stated before the Court of hearing earlier Spl. C.A. No.828/85 that vehicle No.GRT 4574 which was seized has been released by the Municipal Corporation on payment of payable octroi duty payable. So far as the vehicle No.GRX 3217 is concerned, it was stated on behalf of the petitioner that the goods in the said truck were only for the purpose of export and they were not liable for payment of octroi duty as they were in transit only. The statement made on behalf of the petitioner that the goods were in transit was opposed by the learned Counsel for the Corporation. It was, however, stated that the goods have been released on payment of octroi duty. In view of this, learned Counsel for the Corporation made a statement that as and when the petitioner makes an application for refund of the octroi duty paid on such goods, such application will be decided on merits and in accordance with law. An undertaking was given on behalf of the petitioner that if the goods are not exported he will give the name or names and address or addresses and telephone number, if any, of the parties to whom the goods are to be delivered and that the delivery of the goods will not be made without prior intimation thereof to the Ahmedabad Municipal Corporation.

6, From the reading of the earlier order passed in Special Civil Application No. 828 of 1985 it clearly reveals that question of octroi payable on the goods in vehicle No.GRX 3217 was also the subject matter along with the goods in vehicle No.GRT 4574. So far as the vehicle No.GRT 4574 is concerned, the statement was made that the truck has been released on payment of the octroi duty on the goods on which the said octroi duty was payable. Therefore, the order was passed and an undertaking was given only with respect to to the vehicle bearing No.GRX 3217 (it appears that in the said order there is a typographical mistake, instead of vehicle No.GRX 3217 vehicle No.GRX 3271 has been typed. In paragraphs 3 and 6 of memo petition of Spl. C.A. No.828 of 1985 the correct number of the truck GRX 3217 has been given and the same number has been given in the present Special Civil Application i.e. vehicle No.GRX 3217. In spite of this, the facts of earlier Special Civil Application has not been disclosed in the present Special Civil Application. The story of taking the vehicle to the house of the Driver in Maninagar does not find place in the earlier writ petition. The allegations made in the reply copy of which was given to the learned Counsel for the petitioner as back as in the year 1988

have gone unrebutted.

7. In view of the aforesaid, this Court is left with no option but to hold that the petitioner is a guilty of concealment of material facts. In view of this, the petitioner is not entitled to invoke extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. This Special Civil Application is accordingly dismissed. Rule discharged. No order as to cost.

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